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GERMAN AND AMERICAN CRIMINAL LAW COMPARED

Note furnished by Rudolf Leonhard, professor in the University of Breslau, and Kaiser Wilhelm professor in Columbia University, New York.

Gentlemen: You were so kind as to invite me to make some informal remarks about the reforms of criminal law.

I am a former judge of criminal trials and at present professor of Roman law, of which the criminal part has been restored in an admirable way by Theodor Mommsen. Therefore, I dare to utter my opinion also about criminal subjects.

Unfortunately my knowledge of the American criminal law is a very superficial one. But in spite of it I venture to make some general observations, although not based on a special study of your institutions.

There is a great difference between the criminal law of this country and the German law. Especially the national unity of German law is in striking contrast to your mutually exclusive jurisdictions of the single states on this subject. We have had a common written law for Germany from the sixteenth century. Our common law is only supplied by special statutes of the states.

This unity of law corresponds to the unity of social life and social connection between the parts of the empire in a high degree.

Secondly, we live in accordance with the rule: *Nulla pœna sine lege*, namely, *sine scripto jure*. This rule is not at all a matter of course, but a result of a historical development. It is not even perfectly satisfying, because the possibility of punishing offenders, whose crimes do not fall within the narrow frontiers of written texts, has some advantages. But we mean in our country, that these advantages must be sacrificed to a higher degree of civilization and especially to the sentiments of pity for the broad classes of people, who come into conflict with the criminal laws and who can expect and demand a specific definition of what is forbidden and what is permitted.

It would be difficult for you to come directly to a written common criminal law and to the rule: *Nulla pœna sine lege*, because your Constitution obliges you to respect the legislative power of the commonwealths.

But Germany was in former times in the same difficulty and overcame it in two ways, which are open also for you, namely, by an agreement between the different states about the intention of their different laws and by a general national science.

An agreement between the governments created the unity of our commercial law. All states of the old German confederation accepted the same commercial code as a law given by themselves. In the same way you can destroy all superfluous differences between the statutes of the different States.

The customary laws can be written by learned specialists, whose books, when they are worthy, may be elevated to the authority of a code by the practice.

The activity of criminal judges in transgressing the boundaries of statutes and written customary laws can be avoided also in America by the law courts themselves in accordance with the political reasons for such a self-restraint.

If these observations seem to you not worthy to be respected, please excuse my shortcomings for the sake of my good intention.